

Remarks

Claims 1-11, 24-28 and 41-44 are pending. Claim 44 is a new claim.

1. Claim Rejections 35 U.S.C. §103

Claims 1-11, 24-28 and 41 – 43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bryan in view of Clear.

It is submitted that Bryan and Clear combined fail to disclose, teach or suggest an apparatus according to the amended claims 1-11 and 24-28.

The combination of Bryan and Clear, even if proper, would fail to disclose a deck structure having a deck frame including a series of joists, a plurality of modular panels arranged in a substantially abutting relationship, each panel being of a layered construction including a top element and a bottom element, said top element being of a material providing substantial compressive strength and limited tensile strength, said bottom element being of a fiber-reinforced material, each panel having a groove; and a spline engaging a pair of grooves of an adjacent pair of panels, said spline being secured to at least one of the joists to secure the pair of panels to the deck frame, and said spline having a length substantially greater than a distance between a pair of joists, whereby the spline element spans across more than two joists of the deck frame.

Regarding claims 41-43, the combination of Bryan and Clear even if proper, would fail to yield the following aspects of an assembly of the present invention:

*placing a row of panels across the series of joists,

* providing an elongated spline which spans across more than 2 joists,

*inserting the spline into a groove of each panel of the row of panels,

and

*securing the row of panels to the deck frame by fastening the spline element to the series of joists.

Bryan '554 does not teach or disclose placing a row of panels across the series of joists, inserting an elongated spline into a groove of each of the panels of the row, and connecting the row of panels to the deck frame by securing the spline to the series of joists. Bryan '554 purportedly only teaches a step of securing an adjacent pair of panels 12' to cross members 26". Bryan '554 does not disclose or suggest the step of attaching a spline directly to a joist. Rather, spline 18' of Bryan '554 is secured to an intermediate cross member 26". A deck structure according to Bryan '554 would require an additional step of installing and securing cross members 26" between the joists 22. Spline 18' would inherently be sized to span only between a pair of joists 22 as the splines are aligned with cross members 26". Splines 18' of any greater length would interfere with the upstanding portions of joists 22.

There is not teaching or suggestion to lengthen the splines 18' to the presently claimed size as such a modification would render the prior art invention unsatisfactory for its intended purpose, i.e. a deck structure with recessed modular panels supported between upstanding portions of joists 22. See, M.P.E.P §2143.01, citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Furthermore, any proposed modification of Bryan '554 to increase the length of spline 18' so that it spans across and is supported by more than 2 joists would not be obvious as such a modification would change the principle of operation of the prior art invention being modified. See, M.P.E.P §2143.01, citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

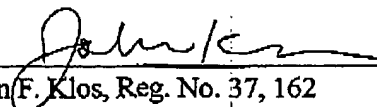
2. Request for Reconsideration and Allowance

Based upon the above Amendments and Remarks, the claims are believed to be in proper form for allowance. Applicant respectfully requests reconsideration of those claims and a prompt Notice of Allowance thereon.

Please direct any questions or comments regarding this application to John F. Klos at (612) 321-2806.

Respectfully submitted,
John Potter, by his attorneys,

Date: September 11, 2003



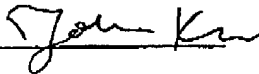
John F. Klos, Reg. No. 37, 162
FULBRIGHT & JAWORSKI, LLP
225 SOUTH SIXTH STREET #4850
MINNEAPOLIS, MN 55402
TELEPHONE: (612) 321-2806

CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8:

I hereby certify that this paper and any papers referred to herein are being sent via facsimile to Commissioner for Patents telephone number 703-872-9327 on September 11, 2003.

John F. Klos: _____

Signature



**RECEIVED
CENTRAL FAX CENTER**

SEP 12 2003

OFFICIAL